IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24960 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARMANBHAI DESAIBHAI PATEL THR' HIS POWER OF ATTORNEY - Petitioner(s)

Versus

SPL.LAND ACQUISITION OFFICER (EXPRESS HIGHWAY) & 1 - Respondent(s)

Appearance :
MR GM AMIN for Petitioner(s) : 1,
Mr.Prashant Mankad,learned Assistant Government Pleader for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 05/07/2007

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Rule. Mr.Prashant Mankad, learned Assistant Government Pleader, waives service of notice on behalf of the respondents. Having regard to the facts of the case, the petition is taken up for final disposal today.

2. By filing the instant petition under Article 226 of the Constitution, the petitioner has prayed to issue an appropriate writ or order calling upon the respondent No.1 to decide his application dated December 21,1997 made under Section 28A of the Land Acquisition Act, 1894 (“the Act” for short) relating to Survey No.905/1 situated in the sim of village Sarki, Taluka Anand, District Anand, which was acquired for public purpose.

3. The petitioner was owner of Survey No.905/1 admeasuring 74.87 sq.mts. situated in the sim of village Sarki, Taluka Anand, District Anand. Alongwith other lands of village Sarki, the Survey Number belonging to the petitioner was acquired for the public purpose of construction of Express Highway pursuant to Notification issued under Section 4 of the Act, which was published in the Government

Gazette on August 8,1988 followed by a declaration made under Section 6 of the Act in the Official Gazette on May 23, 1989. In due course, the Special Land Acquisition officer made his award under Section 11 of the Act on July 30, 1990 and offered compensation to the claimants at the rate of Rs.3.50 Ps. per sq.mts. Some of the claimants, who were dissatisfied with the offer of compensation, sought references. Accordingly References were made to the District Court, Nadiad, where they were numbered as Land Acquisition Case No.406 of 1992, Land Acquisition Case No.1057 of 1991 to 1097 of 1991 with other cognate matters. The Reference Court by common judgment and award dated October 7, 1997 awarded additional amount of compensation at the rate of Rs.11.50 Ps. per sq.mt. to those claimants, who had sought references. The petitioner was also aggrieved by the offer of compensation made by the Special Land Acquisition Officer but had not filed any application under Section 18 of the Act requiring the Special Land Acquisition Officer to refer his case to the Court for the purpose of determination of just amount of compensation payable to him. However, on common judgment and award dated October 7, 1997 being declared by the Reference Court, the petitioner filed

an application under Section 28A of the Act on December 27,1997, a copy of which is produced at Annexure “A” to this petition. By making the said application, the petitioner requested the Special Land Acquisition Officer to re-determine the amount of compensation payable to him on the basis of the award of the Reference Court. As the said application was not decided by the respondent No.1 within reasonable time, the petitioner and others, who had also filed applications under Section 28A of the Act, instituted Special Civil Application No.8900 of 2000 and prayed the court to direct respondent No.1 to decide their applications submitted under Section 28A of the Act promptly. The High Court by judgment dated September 11,2000 directed the respondent No.1 i.e. the Special Land Acquisition Officer to decide the applications submitted by the petitioner and others within a period of one month from the date of receipt of the writ. A copy of the judgment delivered by the High Court in Special Civil Application No.8900 of 2000 is produced by the petitioner at Annexure “D” to this petition. Inspite of direction issued by the High Court, the respondent No.1 failed to decide the applications submitted by the petitioner and others within one month from the date of receipt of the writ

issued in Special Civil Application No.8900 of 2000. Therefore, the petitioner addressed a letter dated May 17,2006 calling upon the respondent No.1 to comply with directions issued by the High Court in Special Civil Application No.8900 of 2000 and decide the applications submitted by him and others under Section 28A of the Act promptly. The grievance made by the petitioner in the instant petition is that though letter dated May 17, 2006 is duly received by the respondent No.1, there is no response from him nor the applications submitted by the petitioner and others under Section 28A of the Act, are decided. Under the circumstances, the petitioner has filed the instant petition and claimed relief to which reference is made earlier.

4. The petition was listed for preliminary hearing before the Court on December 13,2006 and after hearing the learned counsel for the parties, notice was ordered to be issued to the respondents. The order sheet indicates that from time to time, the matter was adjourned at the request of different learned Assistant Government Pleaders, who had appeared in the matter to enable the concerned respondent to file affidavit-in-reply, because the

court was prima facie satisfied that the respondent No.1 had not only disobeyed the direction issued by the High Court in Special Civil Application No.8900 of 2000 but had also disobeyed the direction contained in Circular dated March 10,1997 issued by Revenue Department of Government of Gujarat, which is to be found at Annexure “B” to this petition and compelled the petitioner to invoke jurisdiction of this court under Article 226 of the Constitution repeatedly. Even though several adjournments were granted, no affidavit from any responsible officer was forthcoming. Therefore, the Court had to pass the following order on April 16, 2007:

> “At the request of Ms.Sandhya Natani, learned Assistant Government Pleader for the respondents, the matter is adjourned to April 30,2007, to enable the respondents to file affidavit-in-reply explaining as to why direction contained in the judgment dated September 11,2000 rendered in Special Civil Application No.8900 of 2000 could not be complied with within the time stipulated therein and further indicating as to who shall be responsible for payment of interest to the

petitioner for non-compliance of the order dated September 11, 2000 rendered in Special Civil Application No.8900 of 2000."

5. Mr.Jaswant K.Shah, learned Assistant Government Pleader who was earlier conducting the case, has stated at the Bar that it was only after repeated reminders and after explaining to the concerned officer regarding possible action for contempt of Court which may be initiated for not obeying the direction of the Court to file an affidavit-in-reply, that Mr.R.G.Chaudhari, who is Land Acquisition Officer, Anand has filed affidavit-in-reply dated June 30,2007. In the reply it is admitted by Mr.Chaudhari that application submitted by the petitioner under Section 28A of the Act was received in the office of Land Acquisition officer, Kheda on December 29, 1997 and that the Government had taken a decision in the year 2000 to accept the award of the Reference Court made on October 7, 1997 in Land Acquisition Reference No.406 of 1992 and other cognate matters. However, in the reply it is mentioned that from the year 2000 to 2002 one Mr.A.J. Bhrambhatt, who was looking after the acquisition proceedings, was ill, during which period one

Mr.D.A.Shah, who was Prant Officer, was looking after the acquisition proceedings and, therefore, the proceedings relating to making of the award under Section 28A of the Act remained unattended. Mr.Chaudhari has further mentioned in his reply that during February 1,2000 to September 4,2004, one Mr.M.B. Suthi and Mr. P.B.Dalvadi were in-charge of acquisition proceedings but as they were holding charge temporarily, the file remained unattended. It is further stated by Mr. Chaudhari that during the period from July 21, 2002 to September 3,2004, Mr. Harish Shukla and Mr.H.P. Bhagora, who were Prant Officers, were incharge of acquisition proceedings and as they were also in-charge of acquisition proceedings temporarily, nothing was done by them. It is further mentioned in the reply that Mr.H.J.Parekh, who was Prant Officer from November 20, 2002 to November 16,2003 as well as one Mr. N.S.Vankar, who was incharge of land acquisition proceedings from February 17,2004 to February 29,2004 and Mr.H.J. Parekh,who was incharge of land acquisition proceedings from February 29, 2004 to July 12,2004 did nothing in the matter and the application remained pending in the office of the Land Acquisition Officer. It is also pointed out that

thereafter, one Mr.P.M. Kotak was incharge of land acquisition proceedings from July 13,2004 to June 15,2005 but nothing substantial was done by him. What is mentioned in the reply is that on September 21,2004 the Land Acquisition Officer addressed a letter to the Collector drawing his attention to the difficulties faced by his office and requested him to provide supportive infrastructure. It is claimed in the reply that from September 5, 2004 to March 15,2005, the work relating to acquisition proceedings was allotted to Mr.P.K.Shah, who was not acquainted with the land acquisition proceedings at all and, therefore, the application submitted under Section 28A of the Act could not be attended. It is also pointed out that the work relating to land acquisition proceedings was allotted to one Mr.M.G.Bhagat on April 1,2006, who scrutinized the applications received under Section 28A of the Act and initiated further proceedings between April 1,2006 and September 13,2006. It is also mentioned in the reply that as the land acquisition proceedings in the instant case related to the lands forming part of Anand District, all the papers were transferred from Kheda office of the Land Acquisition Officer to the office of Collector, Anand, which were received in

the office of Prant Officer, Anand on March 22,2007 after which a proposal was sent to the Government on April 2,2007 for making award and draft award was prepared on April 20,2007. It is further stated in the reply that pursuant to application submitted by the petitioner under Section 28A of the Act, a draft award, awarding total compensation of Rs.3,41,398/- was made by the Deputy Collector, Anand, which was approved by the State Government vide order dated April 27,2007. Mr.Chaudhari has produced a copy of the draft award alongwith his reply for perusal of the court. What is stated in the reply is that the payment of the amount of compensation mentioned in the draft award was required to be released by the Executive Engineer, Express Highway Department-I, L.D. Engineering College, Ahmedabad and, therefore, letters were addressed to him to provide necessary funds for the purpose of making payment of the amount due to the petitioner and though the said letter was duly received by the Executive Engineer, Express Highway Department-I, L.D. Engineering College, Ahmedabad, no steps were taken to enable the Land Acquisition Officer to make payment of compensation to the petitioner,as a result of which the incharge Land Acquisition Officer had addressed a letter to

the Collector with a request to do the needful in the matter. The deponent has informed the Court that the Collector addressed a letter dated May 14,2007 to the Executive Engineer, Express Highway Department-I, L.D. Engineering College, Ahmedabad to provide necessary grant immediately so that the payment of amount of compensation mentioned in the award can be made forthwith to the petitioner. It is further stated in the reply that thereafter on June 19,2007, the office of the Land Acquisition Officer received letter from the Executive Engineer, Express Highway Department-I, L.D. Engineering College, Ahmedabad informing that grant was sought from Chief Engineer, P-IV, Transport Highway Department, Transport Bhavan, Parliament Road, New Delhi and that on grant being made available, necessary payment would be made. What is stated in the reply is that inspite of reminder dated June 27,2007 to provide grant for making payment of compensation mentioned in the award, the grant is not made available as a result of which no payment of compensation of the awarded amount has been made to the petitioner. By filing the reply, Mr.Chaudhari has explained above mentioned administrative reasons due to which payment of compensation under Section 28A of the Act could not

be made within the time prescribed by the Court and the Circular to the petitioner.

6. This Court has heard Mr.G.M.Amin, learned counsel for the petitioner and Mr.Prashant Mankad, learned Assistant Government Pleader at length and in great detail. This Court has also considered the documents forming part of the petition, including the explanation offered by Mr.Chaudhari in his affidavit-in-reply. To say the least, the events narrated in the reply-affidavit exhibit total callous approach of the different Government officers named therein, while deciding a simple application filed under Section 28A of the Act. By adopting such a careless and casual approach to the problem, the officers have not only rendered the judgment of High court in Special civil Application No.8900 of 2000 delivered on September 11,2000 and Circular of the Government dated March 10,1997 nugatory but also violated brazen facedly the benevolent provisions of Section 28A of the Act. It is not unusual that Government officers are frequently shifted and different officers are posted against a particular post in the exigency of administration. By giving the entire list of officers who were posted against the relevant post

or held charge thereof, from the year 2000 onwards, will not absolve the respondents of their duty to comply with the directions of this Court and decide the application of the petitioner under Section 28A expeditiously. It cannot be lost sight of the fact that the lands of the petitioner were acquired pursuant to notification under Section 4 of the Act which was published in the official Gazette on August 8, 1988. The Reference Court has rendered its award on October 7, 1997, enhancing the compensation awarded by the Special Land Acquisition Officer. The petitioner has been deprived of the enhanced amount of compensation ever since the year 1997, in spite of filing an application under Section 28A on December 27, 1997, and even after the directions of the High Court in Special Civil Application No.8900 of 2000, rendered on September 11, 2000. In effect, the petitioner has lost his lands and has also been deprived of the amount of compensation determined by the Reference Court, for nearly a decade. Yet, an attempt is made in the affidavit-in-reply to justify the acts of omission committed by the respondents. Such an adversarial attitude on the part of the respondents is not at all appreciated by this Court. Having exercised the right of eminent domain in

acquiring the land of the petitioner, the least that can be expected of the respondents is that they will grant the just claim of the petitioner for compensation within the stipulated period.

7. In his affidavit-in-reply, Mr.Chaudhari has not expressed any remorse for not complying with the directions issued by the High Court in Special Civil Application No.8900 of 2000 nor offered satisfactory explanation as to why Circular dated March 10,1997 issued by the Revenue Department of the Government of Gujarat pursuant to the judgment delivered by the High Court in Special Civil application No.8032 of 1996 could not be complied with and was flouted blatantly. Under the circumstances, this court is of the opinion that it is necessary to direct the Registry to bring to the notice of Secretary, Revenue Department, New Sachivalaya, Gandhinagar a copy of this judgment as well as affidavit in reply filed by Mr.Chaudhari so that remedial measures are taken by him to avoid institution of unnecessary litigations before this Court.

8. Mr.Prashant Mankad, learned Assistant Government

Pleader, on the instructions of Mr.R.G.Chaudhari, Land Acquisition Officer, Anand states at the Bar that the payment of amount of compensation mentioned in the award made under Section 28A of the Act would be made to the petitioner as early as possibly and latest before September 10,2007. Therefore, this Court is of the opinion that interest of justice would be served if the petition is disposed of by directing the respondent No.1 to make the payment of amount of compensation mentioned in the award made under section 28A of the Act on or before September 10,2007 to the petitioner.

9. For the foregoing reasons, the petition partly succeeds. The respondent No.1 is hereby directed to make payment of amount of compensation mentioned in the award dated April 20,2007 made under Section 28A of the Act to the petitioner as early as possible and latest before September 10,2007. It is made clear that non-compliance of this direction will compel the court to initiate contempt proceedings against the respondent No.1 and other officers of the State. The Registry is directed to send a copy of the judgment delivered in the instant petition alongwith affidavit-in-reply filed by Mr.R.G.Chaudhari, Land

Acquisition Officer, Anand, on June 30,2007 to the Secretary, Revenue Department, New Sachivalaya, Gandhinagar for information and taking appropriate action in the matter. Rule is made absolute to the extent indicated hereinabove. There shall be no orders as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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